THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.23788 of 2007

ORDER :

Heard Sri Vedula Srinivas, learned counsel representing the writ petitioners and the learned Government Pleader for Agriculture.

2. The writ petition is filed praying for a Writ of Mandamus declaring the proceedings No.Fertilizer.II(3) 598/2006 dated 19-06-2006 of the second respondent as Ultra Vires, contrary to the provisions of the Control Order and violative of Articles 14 and 19(1)(g) of the Constitution of India and to set aside the same and to issue a consequential direction to the respondent to act in accordance with law and pass such other orders.

3. It is averred that the petitioner is a registered association of the Fertilizer Dealers and the present writ petition is filed on behalf of their members in a representative capacity questioning the validity of the proceedings of the second respondent dated 19-06-2006 which affects all the members of the petitioners. Further it is stated that the members of the petitioners association are registered wholesale dealers in Fertilizers in the State of Andhra Pradesh. The trade of Fertilizers is governed by the Fertilizer Control Order issued by the Government of India in exercise of its powers under Section 3 of the Essential Commodities Act, 1955. Chapter-IV of the Control Order deals with Authorization or registration of dealers in Fertilizers and Clause 7 thereof provides that no person shall sell, offer for sale or carry on the business

of selling of Fertilizers at any place as wholesale dealer or retail dealer except under and in accordance with clause-8. Clause 8(1) deals with the requirement of Industrial Dealers of Fertilizers to obtain a Certificate of Registration. Sub-Clause 2 of Clause 8 requires a manufacturer, an importer, a Pool handling agency wholesaler and a retail dealer of fertilizer to file a Memorandum of Intimation to the notified authority in Form-A1 enclosing a Certificate of Source in Form-O together with the fee prescribed under Clause 36. On receiving such M.O.1, the notified authority would issue an acknowledgement of receipt in Form-A2 and the same amounts to an authorization letter enabling the applicant to carry on the business. Clause 11 of the Control Order deals with renewal of the authorization granted under Clause 8 and the notified authority is empowered to renew the authorization letter from time to time. Insofar as the Industrial Dealers are concerned, Clause 8(1) applies and the grant of Certificate of Registration to them is done under Clause 9. The renewal of such certificate of registration is also done under Clause 11. It is the Controller who deals with the cases of the Industrial Dealers, whereas it is the notified authority who deals with the wholesalers, retailers etc. Controller is defined at Clause 2(e) of the Control Order and it means the person appointed by the Central Government as Controller of Fertilizers. Notified Authority is defined at Clause 2(nn) and it means an authority appointed under clause 26-A. As per clause 26-A, it is the State Government, which appoints such number of notified authorities and would define the local limits within which those authorities should exercise their jurisdiction. The State of Andhra Pradesh

had issued G.O.Ms.No.708 dated 13-05-1992 whereby the Assistant Directors of Agriculture (Regular) are appointed as registering Authorities for the purpose of issuing Certificate of Registration to the retail and wholesale dealers in fertilizers. The Joint Director of Agriculture (Fertilizers) is notified as the registering authority for the purpose of issuing certificate of registration to the manufacturer, pool handling agencies and manufacturers acting as marketers. As stated above, a wholesaler/retailer would apply to notified authority in Form-A1 enclosing the Source Certificate in Form-O. The Certificate of Source is defined at Clause 2(b) as a certificate given by a State Government, Committee, Board, Manufacturer, Importer, Pool handling agency or as the case may be, wholesale dealer indicating therein the source from which the Fertilizer for the purpose of sale is obtained. As per Form-O prescribed under the Control Order, a Wholesaler is competent to issue such certificate in favour of another Wholesaler or a Retail Dealer.

4. Further it is averred that all the members of the petitioners association have been carrying on the trade of Fertilizers after obtaining the certificate of registration from different notified authorities by furnishing the Source Certificate in Form-O and after paying the due fees. There are no restrictions under the Control Order upon the issuing of Source Certificate by one Wholesaler to another Wholesaler, nor are there any provisions constituting centralized certificate of registration to be obtained from the Commissionerate for carrying on the business in the jurisdiction of more than one Notified Authority. The second respondent issued certain executive instructions vide Memo No.Fertilizer.II(3)598/2006 dated 19-06-2006

incorporating various instructions in exercise of Clause 2(e) of the Control Order. These instructions are serious in nature and some of them even go beyond the provisions of the Control Order and they are also in the nature of imposing restrictions on the activities of the wholesale dealers, contrary to the Control Order. For example, the instructions 8 and 9 say that a wholesale dealer shall issue Form-O to a retail dealer only, that too only in the jurisdiction of the notified authority by whom the certificate of registration is granted and no wholesale dealer shall issue Form-O to another wholesaler. These two instructions restrict a wholesaler from selling the fertilizers to another wholesaler by issuing to form-O informing the source. This restriction is contrary to the Control Order since the definition of Certificate of Source at Clause 2(b) read with the Form-O clearly enables a wholesaler to issue the Form-O to another wholesaler and sell fertilizers to such wholesaler. Hence, clauses 8 and 9 of the impugned proceedings are illegal and unsustainable. Similarly, clause 11 there of is also illegal as it says that the cooperative institutions, like P.A.C.S. and M.A.C.S., should not sell the fertilizers to anybody except to the fertilizers. There is no power to impose such a restriction in the Control Order and hence the Clause 11 is also illegal. It is submitted that clauses 1 and 2 whereby the second respondent had defined the effectiveness of the Form-O in different situations depending upon the authority, who issued the Certificate of Registration, is also ultra vires his powers. The control order does not contain any provision to define the jurisdiction of the source certificate depending upon the status of the authority who granted the Certificate of

Registration. Hence, the said clauses 1 and 2 are beyond the competence of the second respondent. The second respondent through the instruction No.4 introduced the system of Centralized Certificate of Registration for those dealers who are desirous to carry on the business within the jurisdiction of more than one notified Authority. Such a thing is not provided under the Control Order and there is no system of a Centralized Certificate of Registration thereunder. The second respondent had also imposed a new restriction on the wholesalers whereby they had to obtain separate Certificate of Registration from different notified authorities for doing the trade, which is not provided under Clause 8 or Clause 11 of the Control Order. It is stated that there is no power conferred under the Control Order on the second respondent to issue the directions as are contained in the impugned proceedings. Hence, the proceedings of the second respondent dated 19-06-2006 are clearly contrary to the terms of the Control Order and are also unauthorized.

5. Further it is stated that the notified authorities in the State are now insisting upon the implementation of the instructions issued under the impugned proceedings by the second respondent and the members of the petitioner association are put to severe hardship. It is only in October, 2007 that the petitioners came to know about the impugned proceedings and hence there is no intentional delay in filing the present Writ Petition. The impugned proceedings, being beyond the competence of the second respondent and being contrary to the provisions of the Control Order, are liable to be suspended pending disposal of the Writ Petition.

6. In the above circumstances, the writ petitioners

approached this Court praying for the reliefs specified supra.

7. In the counter-affidavit filed by the second respondent it is stated that the first respondent in the capacity of Commissioner & Director of Agriculture, Hyderabad, issued certain circular instructions, which is in the nature of administrative guidelines, to his subordinates in the State while dealing with the licenses, to be issued under Fertilizer (Control) Order, 1985. As such, these instructions are only internal/Departmental Instructions. Hence, the petitioners-Association has no cause of action to challenge the same. It is further averred that the Additional Director of Agriculture (Fertilizer) is a notified authority for the purpose of issuing certificates of Registration to the manufacturers/pool Handling Agencies, who are acting as a marketers as per G.O.Ms.No.397, Dated 19-10-2005. Further it is averred that the contention of the petitioners-association that the wholesalers are competent to issue Form “O” prescribed under the FCO 1985 in favour of the another wholesaler or retail dealers is not correct. In fact, Form-“O” is a certificate of source for carrying on the business of selling Fertilizers in Wholesale/retail or for industrialists in order to regulate month-wise distribution of fertilizers in all the Districts in the State as per their requirements and to regulate and monitor the availability of fertilizers as per the requirements within the District, the jurisdiction of Form-“O” had been defined by the State Controller of Fertilizers. Further it is the duty and responsibility of the State Govt. to ensure that the Fertilizers are made available to the farmers on M.R.P. (Maximum Retail Price) therefore in the interest of farming community, the Controller i.e., the

Commissioner & Director of Agriculture, A.P., Hyderabad, issued the instructions to all the Joint Directors of Agriculture, Assistant Directors of Agriculture and Mandal Agriculture Officers in the State. As such, these instructions are only internal/Departmental instructions and the petitioner-association has no locus to challenge the same.

8. It is also further averred that nowhere in the FCO 1985 it is mentioned that the source of certificate i.e., Form-"O" can be issued by a wholesaler to another wholesaler and it is also not mentioned that there is no provisions for Centralized Certificates of Registration. Further, these are administrative instructions brought about keeping in view of the arrangement required in a particular State in order to have a thorough control over the availability and monitoring of the Fertilizers. Further, the Executive Instructions enable the Officers working in various Districts to have a thorough check on quality and quantity of the fertilizers. As such, the impugned instructions had been issued for effective administrative actions and also for the purpose of guiding the officers. Apart from that, these instructions enable the persons to carry on the business of Fertilizers within the jurisdiction of Asst. Director of Agriculture (R), within the jurisdiction of more than one Asst. Director of Agriculture (R), within one District or in the entire State by obtaining certificate of registration. The Cooperative institutions, like PACS and MACS, have registered for the welfare of their farmers. Basically, as per the Bye-Laws of Cooperatives Societies, they have to do business in their area of operation and for arranging inputs to their member farmers, which is mandatory on the Societies. Accordingly, the

Commissioner & Director of Agriculture, Hyderabad, issued instructions that cooperative societies should do trade in fertilizers to their member farmers. It is further stated that the Joint Director of Agriculture can regulate and monitor the movement of fertilizers in the respective jurisdiction and the notified authorities i.e., Asst. Director of Agriculture (R) can regulate the movement of fertilizer in their jurisdiction without encroaching the others jurisdiction. With regard to the other contention of the petitioners association that the second respondent had imposed a new restriction on the wholesaler whereby they have to obtain separate certificate of registration from the different notified authorities for the purpose of trade which is not provided under Clauses 8 and 11 of the FCO 1985, it is stated that the same is not correct. It is further stated that as already stated above, the impugned instructions have been issued in order to provide guidelines to the officers working in various Districts in the State. As such, there is no infirmity in the action of the first respondent in issuing impugned circular instructions to the subordinate departmental officers.

9. Further it is stated that the contention of the petitioners association that the impugned instructions issued by the first respondent and in view of that the petitioners-association are put to severe hardship is not correct. It is further stated that as already stated above the impugned instructions had been issued by the Controller of Fertilizer/Commissioner & Director of Agriculture, A.P., Hyderabad, for better quality of assurance and the provisions of FCO 1985 have to be implemented. The petitioners association is not affected directly by the impugned instructions and therefore the

petitioners association has no cause of action to challenge the same and on this ground alone the Writ Petition is liable to be dismissed and that, if any orders have been passed basing on these instructions issued by the first respondent and in case if any license holder aggrieved by the said orders, he can as well challenge the same by filing the writ petition, but petitioners association have no right to question the impugned proceedings.

10. These are the respective stands taken by the parties on record. This Court issued Notice Before Admission on 13-11-2007.

11. In the light of the respective stands taken by the parties, it is not the case of the writ petitioners that in pursuance of the instructions, which had been referred to in the affidavit filed in support of the writ petition, any action had been initiated and any order as such had been passed, which had prejudiced the rights of any of the members of the writ petitioner. It may be that if the writ petitioners are apprehensive of such action being initiated in pursuance of such inter-departmental instructions or guidelines, as the case may be, liberty is given to the members of the writ petitioners-association to raise all the contentions raised in the present writ petition at the appropriate time. Since this Court is satisfied that at present the writ petitioners have no cause of action to file the present writ petition, with the above observation, the writ petition is dismissed. No order as to costs.

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P.S.NARAYANA, J.

12th December, 2007.

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THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No. 23788 of 2007

Dated: 12th December, 2007

BETWEEN:

The Fertilizers Wholesale Dealers
Association (Regd.No.415/04) 11-60-39,
Waizulla Saheb Street, Vijayawada-1,
represented by its President
E.Bheemasankara Rao,
S/o Satyanarayana, Aged 52 years and another
.. Petitioners

And

The State of Andhra Pradesh,
represented by its Commissioner
and Director of Agriculture,
Hyderabad and another
.. Respondents